IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 5 OF 2004

Mr. Gurudas Bhalchandra
Shirodkar, son of Bhalchandra
Atmaram Shirodkar, r/o House
No.462, Tembar Vaddo, Assagao,
Bardez, Goa. ... Applicant/Original Plaintiff

versus

1. Shri Shashikant Bhalchandra
   Shirodkar, major,

2. Smt. Smita Shashikant Shirodkar,
   major, both r/o House No.463,
   Tembar vaddo, Assagao,
   Bardez, Goa. ....Respondents/Original Defendants

Mr. S. D. Lotlikar, Senior Advocate with Ms. Shreya Naik, Advocate for the Applicant.

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. S. Karpe, Advocate for the Respondents.

CORAM : N. A. BRITTO, J.

DATE : 23RD SEPTEMBER,2004

ORAL ORDER

Heard learned Senior Counsels S/Shri S. D. Lotlikar and J. E. Coelho Pereira on behalf of the Applicant/Plaintiff and Respondents/Defendants, respectively. By virtue of application dated 14th June, 2004, the Plaintiff seeks to review the Judgment/Order of this Court dated 5th May, 2004.

2. Before the hearing, the Plaintiff had submitted a plan which was already at page 81 for reconsideration of the Defendants and which has not been acceptable to them.

3. Mr. S. D. Lotlikar, learned Senior Counsel for the Applicant submits that this Court could not have accepted one proposal given by one party without the consent of the other. Mr. Lotlikar, learned Senior Counsel has also submitted that there is no satisfaction recorded that shares which had been allotted are equal in value. It is also the submission of Mr. Lotlikar that there is no mention by this Court regarding the area which as per plan at page 36 was kept for road widening or the area which was kept for access.

4. On the other hand, Mr. J.E.Coelho Pereira, learned Senior Counsel for the Respondents has submitted that there is no error apparent on the face of record to give cause to the Plaintiff to seek

review of the Judgment/Order of this Court dated 5th May, 2004. Mr. Coelho Pereira, learned Senior Counsel in support of his submission has referred to the provisions of O 47, R 1 C.P.C. and has placed reliance on the case of **Smt. Meera Bhanja** v. **Smt. Nirmala Kumari Choudhury** (AIR 1995 SC 455). In this case, the Supreme Court has stated that the power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the Order was made; it may be exercised where some mistake or error apparent on the face of record is found; it may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits since that would be the province of a Court of Appeal. The Supreme Court has also observed that it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions.

5. Mr. Coelho Pereira, learned Senior Counsel has also placed reliance on a decision of a Division Bench of this Court in the case of **Rajkumar Ramavtar Chourasia** v. **Mathew Charian Christian** (AIR 1984 Bombay 458). In this case, this Court held that a decision erroneous in law is certainly no ground for ordering a review. If a Court had decided a point, but decided it erroneously,

the error could not be one apparent on the face of the record or even analogous to it.. A mere conflict or divergence of opinion cannot amount to an error apparent on the face of the record.

6. This Court at the time of pronouncing the Judgment/Order dated 5th May, 2004, did not consider any proposal as such of any of the parties but considered three options which were available for a just and equitable divisions of the property between the said two brothers namely Shashikant(Defendant) and Gurudas(Plaintiff) and chose an option as per plan at page 36 of the Paper Book and that too, after rejecting the plan earlier prepared by the Commissioner which was at page 30 and the plan produced by the Plaintiff which was at page 81 and which was also produced at the time of hearing of this review application. This Court while approving the division as per the said plan at page 36 observed that considering the totality of the facts the division as per the said plan was the most convenient, practicable and equitable division of the property of both the parties. As per the said plan at page 36 each of the parties get a plot of land of 711.50 sq. metres. An area of 55 sq. metres was kept for road widening and an area of 196 sq. metres was kept as a common access to both the plots. These aspects this Court did take into consideration while coming to the conclusion that the division of the property between both the parties as per the said plan at page 36 would be the most convenient, equitable and practicable division between them. Needless to observe that the said areas of 55 sq.

metres and 196 sq. metres would continue to belong to both the parties. The statement that the"Defendants have also agreed to keep four metres access from their own share" inadvertently crept in the said Order and the same was contrary to what was shown on the plan at page 36. The division was not based on the said statement but on the plan at page 36.

7. In my opinion, there is no ground to review the said Judgment/Order of this Court. Consequently, the application is hereby dismissed. The parties to bear their own costs.

N. A. BRITTO, J.

RD.